

WORKERS' COMPENSATION ADVISORY COUNCIL

**MINUTES ~ NOVEMBER 9, 1999 MEETING [10:00 A.M.]
710 JAMES ROBERTSON PARKWAY
HEARING ROOM, FIRST FLOOR
ANDREW JOHNSON TOWER
NASHVILLE, TENNESSEE**

The meeting was called to order by State Treasurer Steve Adams, Chair.

Voting members in attendance:

Mr. Jack Gatlin [by proxy to Mr. Neeley]
Mr. James G. Neeley
Mr. Bob Pitts
Mr. Othal Smith, Jr. [by proxy to Mr. Neeley]
Mr. Steve Turner [by proxy to Mr. Pitts]
Mr. Carter Witt [by proxy to Mr. Pitts]

Nonvoting members in attendance:

Ms. Jacqueline B. Dixon
Mr. Tony Farmer [by telephone conference call]
Ms. Abbie S. Hudgens
Mr. Jerry Mayo

Ex officio members in attendance:

Mr. Michael E. Magill, Commissioner, Department of Labor and Workforce
Development
Mr. Neil Nevins, Assistant Commissioner, Department of Commerce and Insurance
[designee for Ms. Anne Pope, Commissioner, Department of Commerce and Insurance]

Also present:

M. Linda Hughes, Executive Director

The minutes of the September 23, 1999 Workers' Compensation Advisory Council meeting were unanimously approved.

1. ASSIGNED RISK PLAN REPORT [Review/Discussion/Approval]

The Executive Director discussed the proposed Assigned Risk Plan Report which had been prepared by staff and faxed to each member for review. The report contains two recommendations: (1) Amendment of the July 1, 2000 trigger date for the activation of the competitive state fund or a plan of direct assignment to correspond with the loss costs sunset date of July 1, 2001 and (2) Amendment of the applicable statute to consolidate the Advisory Council's study of the assigned risk plan with the impact study of the advisory prospective loss costs system which is due January 1, 2001. After discussion of the proposed report, a motion was made by Mr. Pitts and seconded by Mr. Neeley to approve the report as drafted.

2. DISCUSSION OF UNINSURED EMPLOYERS AND COMMENTS OF THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT RE: PROCEDURES TO ENHANCE COMPLIANCE AND PROVIDE BENEFITS TO INJURED WORKERS

Ms. Sue Ann Head, Administrator of the Division of Workers' Compensation, was recognized to present the Department's comments. Ms. Head noted 16 states have some type of special fund to benefit employees who are injured while in the employ of a noncompliant employer. The funds are diverse both in scope and costs. She explained the "proposal" for discussion is a draft or blueprint of suggestions as to how a fund could be established in Tennessee if such a fund is the will of the Advisory Council, the Oversight Committee and General Assembly.

She then reviewed the "draft" for the implementation of a special fund and a proposed mechanism for enhancing employer compliance with the workers' compensation law. After her presentation and discussion concerning the two issues, the members of the Advisory Council requested Ms. Head, staff of the Advisory Council and someone from the Claims Commission to further review the "draft" proposals, consider revisions based on member comments and present a revised "draft" at a meeting to be set in December for the purpose of making recommendations to the Oversight Committee concerning the issues.

3. REPORT OF DEPARTMENT OF COMMERCE AND INSURANCE RE: APPROVED ADVISORY PROSPECTIVE LOSS COSTS

Assistant Commissioner Nevins reported to the Advisory Council that Commissioner Doug Sizemore had approved a 7.0% increase in the advisory prospective loss costs to be effective March 1, 2000.

4. CONSIDERATION OF LAW REQUIRING APPROVAL OF DEVIATIONS [EXCESS OF 20%] FROM APPROVED LOSS COSTS (Sunset Date - June 30, 1999)

Mr. Pitts noted the law requiring the Department of Commerce and Insurance to approve any loss costs deviations in excess of 20% from the approved loss costs expired on June 30, 1999 without discussion or consideration. He stated he felt the Advisory Council should make a recommendation as to whether the expiration of this requirement was appropriate or whether it should be re-enacted. He suggested this issue be placed on the agenda for the December meeting. Mr. Adams indicated a desire for the Department of Commerce and Insurance to make its recommendation, suggestions or alternatives concerning the issue at the December meeting.

5. REQUESTS TO COUNCIL

The Executive Director directed the Advisory Council's attention to two pieces of correspondence received by the Advisory Council. The first was a letter from Vanderbilt University concerning the issue of required drug/alcohol testing for Drug-Free Workplaces and the payment of medical bills. The Advisory Council requested the Executive Director to request additional information from Vanderbilt. The second was a letter from DataLister, Inc. forwarded to the Advisory Council by the Senate Commerce and Labor Committee for informational purposes only as the Committee did not request the Advisory Council to take any action on the issue.

6. REPORT OF DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

Mr. Jim Farmer, Director of Workers' Compensation, made the presentation concerning the status of the computer system and status of the SD-1 forms. Mr. Farmer reported the computer system was implemented in mid-July and the Department continues to input data into the new system, to convert data from the old system into the new computer system, to correct problems which arise with either the hardware or the design of the system and to test the system to assure it functions as intended. He also noted the Department has planned two enhancements to the system - data imaging and collection of electronic data. The Department has issued a contract for an imaging system which should be fully implemented by May, 2000. Also, the Department expects to begin receipt of coverage information from insurance companies by electronic means by mid-January, 2000. The companies participating will do so voluntarily. Mr. Farmer indicated the new system captures much more data than the old system and the Division is excited about the possibilities the new system gives.

Mr. Farmer then presented a status report concerning the SD-1 forms. He noted because the SD-1 forms became effective November 1, 1998 and the new computer system was not on-line until mid-1999, there is a backlog of SD-1 forms that require entry into the computer. The Department

is in the process of entering this data and hopes to have the backlog resolved by mid-January, 2000. Mr. Farmer reported a large number of the forms are not fully complete and the Department is sending a letter to the parties to advise the claim is not final until the form is complete. Also, the Department is receiving duplicate SD-1 forms because some parties sent the form to the Department in addition to the forms received from the court clerks' offices. He also noted the SD-1 data sometimes conflicts with information already in the system concerning the claim. When this occurs the Department will contact the parties involved to determine which data is accurate - the SD-1 data or the data in the system. The accurate data will be entered. SD-1 data determined by the Department to be inaccurate will not be entered into the system.

Ms. Head reported on the status of the Department's efforts to obtain authority to settle Second Injury Fund cases. Currently, Mr. Mark Reineke, general counsel for the Department, is working on a Memorandum of Agreement concerning a potential settlement process. When the Memorandum is completed the Advisory Council will be advised in writing.

7. EXECUTIVE DIRECTOR REPORT

Ms. Hughes reviewed the dates selected for Advisory Council meetings in 2000. Mr. Sims suggested three meetings in February to streamline the process of consideration of bills by the legislative committees. Ms. Hughes was requested to select available dates for the December meeting and survey the members to schedule the date of the December, 1999 meeting.

The meeting was adjourned at 12:15 p.m.